BINTANGOR GAS SDN BHD A

v.

SHELL TIMUR SDN BHD & ANOR

HIGH COURT SABAH & SARAWAK, KUCHING B
CLEMENT SKINNER J
[SUIT NO: 22-142-2003-I]
10 MARCH 2006

CIVIL PROCEDURE: *Striking out - Writ and statement of claim - Grounds for - Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (c) or (d) and r. 19(2) - Whether claim had reasonable cause of action - Whether under O. 18 r. 19(2) court must confine itself to four corners of plaintiff's statement of claim - Question whether pleadings disclose a reasonable cause of action is to be determined at date of filing of action - Court not to enter upon a minute examination of documents and facts - Fact that plaintiff may have a weak case is no reason to strike out under O. 18 r. 19(1)* C D

CIVIL PROCEDURE: *Pleadings - Cause of action - Continuing breach of contract - 2nd defendant not registered as a firm when breach first occurred but was in existence as a firm when plaintiff commenced action - Action properly commenced since breach complained of was a continuing breach* E

CONTRACT: *Breach - Continuing breach - Fresh cause of action accrues during continuation of breach*

The 1st defendant had entered into a Dealership Agreement with the plaintiff whereby the plaintiff was appointed as an authorised dealer to purchase and resell the 1st defendant's LPG product. The plaintiff alleged that it was allocated several pockets of area in Kuching where it would have exclusive rights to supply the LPG products. The plaintiff further alleged that in February 1999 the 1st defendant appointed the 2nd defendant to be its dealer to sell the LPG products within the plaintiff's area of operation. According to the plaintiff, the 2nd defendant's appointment was wrongful and or illegal, in that, the 1st defendant knew or ought to have known that the 2nd defendant did not have the relevant licence or permit from the relevant authorities to obtain and market the 1st defendant's LPG products. F G H

On 8 December 2003 the plaintiff commenced this action against the 1st and 2nd defendants. The 2nd defendant denied the plaintiff's allegations and claimed that the plaintiff's statement of claim did not disclose a reasonable cause of action because the entity that was named as the 2nd defendant was 'Syarikat Pulau Burung' a business firm which was I

registered only on 13 April 1999. Therefore, the 2nd defendant claimed that no cause of action could have accrued against it in February, 1999 when it was not even in existence. The 2nd defendant also maintained that the plaintiff's action was scandalous, frivolous or vexatious and an abuse of the process of court because at all material times it was issued with the necessary license/permit to deal in and market the 1st defendant's LPG products. In support of this, the 2nd defendant produced the necessary documents in the affidavits filed on its behalf. The 2nd defendant applied to strike out the plaintiff's action against it under O. 18 r. 19 Rules of the High Court 1980 ('RHC'). The plaintiff on the other hand claimed that the 2nd defendant here was a completely different firm from Syarikat Pulau Burung of No. 11 Pasar Sebuyau, Sebuyau which was registered as a firm at Sri Aman on 3 April 1985 as shown on the documents.

Held (dismissing the 2nd defendant's application with costs):

(1) In considering the issue whether the plaintiff has a reasonable cause of action against the 2nd defendant, in light of O. 18 r. 19(2) RHC, the court must confine itself to the four corners of the plaintiff's statement of claim. The issue before the court was whether the plaintiff's pleadings disclosed a reasonable cause of action against the 2nd defendant. The point of time at which this question is to be determined is at the date on which this action was filed. (paras 15 & 18)

(2) In the case of a continuing breach a fresh cause of action accrues during the continuation of the breach *ie*, the 2nd defendant's wrongful appointment. Although the 2nd defendant may not have been registered as a firm in February 1999, it was certainly in existence as a firm when the plaintiff commenced this action. Accordingly it was not an abuse of process to bring this action against the 2nd defendant in its firm name especially as the breach complained of was a continuing breach. Therefore, the 2nd defendant's application to strike out under the first limb of O. 18 r. 19(1) failed. (paras 18 & 20)

(3) The plaintiff's assertion seemed to be supported by documents before the court and it was not permissible for the court to try these disputed facts on affidavit evidence nor should the court enter upon a minute examination of the documents and facts to determine whether what the plaintiff or 2nd defendant asserted was the true or correct version. On the materials placed before the court, the plaintiff's allegations were not scandalous, frivolous, vexatious and

an abuse of the process of court. The fact that the plaintiff may have a weak case against the 2nd defendant was no reason to strike out the case under the summary process under O. 18 r. 19(1). The 2nd defendant's application under the second and fourth limbs of O. 18 r. 19(1) also failed. (para 27)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(foll)***

Fu Yen Development Sdn Bhd v. Shelly Yap Leong & Co [2001] 3 CLJ 946 HC ***(dist)***

Legislation referred to:

Control of Supplies Regulations 1974, reg. 4(1)
Petroleum Development Act 1974, s. 6
Petroleum Regulations 1974, reg. 5(1)
Rules of the High Court 1980, O. 18 r. 19(1), (2), O. 77 r. 1
Sarawak Business Names Ordinance (Cap 64), s. 5(1)

For the plaintiff - Tan Kee Heng; M/s Chong Brothers
For the 1st defendant - Desmond Sahathevan; M/s Battenberg & Talma Advocates
For the 2nd defendant - Francis Ting; M/s Sio & Ting Advocates

Reported by Amutha Suppayah

JUDGMENT

Clement Skinner J:

[1] This is the hearing of an application by the 2nd defendant to strike out the plaintiff's action against it under O. 18 r. 19 Rules of the High Court 1980 ('the RHC') on the grounds that:

(i) the plaintiff has no reasonable cause of action against it;

(ii) the plaintiff's action is scandalous, frivolous or vexatious;

(iii) it is otherwise an abuse of the process of the court;

(iv) under the inherent jurisdiction of the court.

[2] The brief facts leading to this application are these.

[3] The plaintiff herein is a company incorporated with limited liability under the Companies Act 1965 and has its registered office at No. 989, 1st Floor BDC Stampin Commercial Centre, Taman Satria Jaya, Jalan Stutong, Kuching. The 1st defendant is Shell Timur Sdn Bhd, a

company also incorporated with limited liability under the Companies Act 1965 and having a place of business at Jalan Pelabuhan, Kuching, Sarawak. The 1st defendant sells, amongst other products, Liquefied Petroleum Gas under the trade name of 'Shell Gas' (hereafter 'the 1st defendant's LPG product').

[4] On 1 March 1994 the 1st defendant entered into a dealership agreement with the plaintiff (hereafter 'the dealership agreement') whereby the plaintiff was appointed as an authorised dealer to purchase, resell, distribute and market the 1st defendant's LPG product.

[5] In 1999 the 1st defendant introduced a scheme amongst its dealers, including the plaintiff, known as the D'Leap Arrangement. Under this scheme the 1st defendant demarcated and allocated certain areas or pockets, within which the 1st defendant's LPG products would be supplied either exclusively or on a shared basis by its dealers. The 1st defendant also set performance targets for its dealers in respect of the areas allocated to them.

[6] The plaintiff alleges that under the D'Leap Arrangement, it was allocated eight pockets of area in Kuching where it would have exclusive rights to supply the 1st defendant's LPG products while in another three pockets of area in Kuching it would share that right with other dealers.

[7] The plaintiff alleges that some time in February 1999 the 1st defendant appointed the 2nd defendant to be its dealer to sell the 1st defendant's LPG products within the plaintiff's area of operation under the dealership agreement. The plaintiff alleges that the 2nd defendant's appointment was wrongful and or illegal, in that, the 1st defendant knew or ought to have known that the 2nd defendant did not have the relevant licence or permit from the relevant authorities to obtain a supply of the 1st defendant's LPG products from the 1st defendant directly and thereafter to market and distribute the same. Pausing here for one moment the 'relevant licence or permit' from 'the relevant authority' which the plaintiff alleges the 2nd defendant did not have were:

(a) a licence to deal in liquefied petroleum gas (being a controlled article) by wholesale and retail under reg. 4(1) of the Control of Supplies Regulations 1974 which regulation is made pursuant to powers contained in the Control of Supplies Act 1961 (hereafter 'the CSA licence'). This licence is issued by the Ministry of Domestic Trade and Consumer Affairs Malaysia (formerly Ministry of Trade and Industry Malaysia);

(b) a permit to market or distribute petroleum or petro-chemical products issued by the Ministry of Domestic Trade and Consumer Affairs Malaysia, in accordance with s. 6 of the Petroleum Development Act 1974 and reg. 5(1) of the Petroleum Regulations 1974 (hereafter 'the PDA permit'). A

[8] On 8 December 2003 the plaintiff commenced this action against the 1st defendant and 2nd defendant. I shall deal with the plaintiff's pleaded case in more detail shortly but briefly stated, it is the plaintiff's case that in February 1999 the 1st defendant wrongfully and/or illegally appointed the 2nd defendant to be a dealer of the 1st defendant's LPG product within the plaintiff's area of operation under the dealership agreement because the 2nd defendant did not have the necessary CSA licence and PDA permit to deal with or market the 1st defendant's LPG products. The plaintiff also alleges that the 1st defendant's act in granting the 2nd defendant the said pockets of area and the 2nd defendant's act in accepting the same constitutes a conspiracy between the 1st and 2nd defendants to injure the plaintiff's legitimate rights and interest under the dealership agreement as varied by the D'Leap Arrangement. B C D

[9] The 2nd defendant denies the plaintiff's allegations. The 2nd defendant maintains that the plaintiff's statement of claim, as it stands, even if the allegations against the 2nd defendant are proven, does not disclose a reasonable cause of action because the entity that is named as the 2nd defendant is 'Syarikat Pulau Burung' a business firm which was registered with the Kuching Business Names Registry bearing Business Names Registration No. 47811 on 13 April 1999. Accordingly it is the 2nd defendant's case that no cause of action could have accrued against it in February, 1999 when it was not even in existence and came into being on its registration on 13 April 1999. Thus the 2nd defendant has applied to strike out the plaintiff's case under the first limb of O. 18 r. 19(1) RHC. E F G

[10] The 2nd defendant also maintains that this action which is brought against it by the plaintiff is scandalous, frivolous or vexatious and an abuse of the process of court because at all material times it was issued with a CSA licence and PDA permit to deal in and market the 1st defendant's LPG products. In support of what it says, the 2nd defendant has produced, in the affidavits filed on its behalf in these proceedings, a copy of the following: H

(i) Two licences dated 15 July 1999 issued to Syarikat Pulau Burung of No. 97 Jalan Stapok, Batu Kawa, 93250 Kuching, Sarawak under reg. 4(1) of the Control of Supplies Regulation 1974; I

(ii) A permit No. PDA 6766 dated 2.1.1990 which was issued to three persons, namely, Utin B. Arif, Wan Abd. Latip B. Wan Manshor and Law Keng Yang trading as Syarikat Pulau Burung at No. 11, Pasar Sebuyau, 94850 Sebuyau, Sarawak under s. 6 of the Petroleum Development Act 1974.

[11] It is the 2nd defendant's case that the firm Syarikat Pulau Burung of No. 97 Jalan Stapok, Batu Kawa, Kuching which is named in the two licences issued under reg. 4(1) of the Control of Supplies Act 1974, and the firm Syarikat Pulau Burung of No. 11 Pasar Sebuyau, Sebuyau, Sarawak which is named in the permit issued under s. 6 of the Petroleum Development Act 1974, are one and the same business firm as that which has been named as the 2nd defendant in this suit, namely, Syarikat Pulau Burung of No. 97 Jalan Stapok, Batu Kawa, Kuching with Business Name Registration No. 47811. By way of explanation on behalf of the 2nd defendant, its co-proprietor one Law Keng Yang has in his affidavit affirmed on 21 June 2004 explained that Syarikat Pulau Burung of No. 11, Pasar Sebuyau, Sebuyau, Sarawak was originally registered with the District Office at Sri Aman on 3 April 1985 and issued Business Name Registry No. 21/85 and in September 1990 was appointed by the 1st defendant as a dealer of the 1st defendant's LPG products in the Sebuyau area which is within the Sri Aman District. Mr. Law Keng Yang asserts that in early 1999 the 1st defendant agreed to extend the area of market coverage of Syarikat Pulau Burung of No. 11 Pasar Sebuyau in Sri Aman, to Kuching town subject to certain terms and conditions. According to Mr. Law Keng Yang, to enable Syarikat Pulau Burung of No. 11, Pasar Sebuyau, Sri Aman to trade and do business in Kuching district, it needed to comply with the Business Names Ordinance (Cap 64) by getting itself registered with the Registrar of Business Names at Kuching with an address in Kuching. Accordingly, Mr. Law states that on 13 April 1999 he successfully registered Syarikat Pulau Burung of No. 97 Jalan Stapok, Batu Kawa, Kuching with the Registrar of Business Names Kuching and was issued BNR No. 47811, which firm was originally registered as a sole proprietorship in his name, but two weeks later on 1 May 1999, the firm became a co-proprietorship.

[12] The 2nd defendant now contends that since at all material times it held the necessary CSA licence and PDA permit to deal in and market the 1st defendant's LPG products, it is scandalous, frivolous, vexatious and an abuse of process for the plaintiff to bring this action against it. Hence it has applied to strike out the plaintiff's claim under the second and fourth limb of O. 18 r. 19(1) RHC.

[13] The plaintiff denies that it has no cause of action against the 2nd defendant and says that the 2nd defendant here is a completely different firm from Syarikat Pulau Burng of No. 11 Pasar Sebuyau, Sebuyau which was registered as a firm at Sri Aman on 3 April 1985 with BNR No. 21/85.

[14] Before addressing the substantive issues raised in this application this will be a convenient place to address the law on the matter at hand. In *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7 it was held by the Supreme Court that the principles upon which the court acts in exercising its powers under any of the four limbs of O. 18 r. 19(1) of the Rules of the High Court 1980 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'. It cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence. Further, so long as the pleadings disclosed some cause of action or raised some question fit to be decided by the judge, the mere fact that the case is weak and unlikely to succeed is no ground for striking out.

[15] I now turn to consider first the issue whether the plaintiff has a reasonable cause of action against the 2nd defendant. In determining this question sub-r. (2) of O. 18 r. 19 states that:

> No evidence shall be admissible on an application under paragraph (1)(a).

Accordingly I must confine myself to the four corners of the plaintiff's statement of claim. The pleaded facts in the statement of claim, in so far as they concern the 2nd defendant are found in the following paragraphs:

> 3. The 2nd Defendant is a business firm name registered with the Kuching Business Names Registry under the Business Names Ordinance bearing Business Registration No. 47811 of 13-04-1999 and having its registered place of business at No. 97, Jalan Stapok, Batu Kawa, Kuching, Sarawak.
>
> 12.1 Sometime in February, 1999, the 1st Defendant wrongfully and/or illegally appointed the 2nd Defendant to be the 1st Defendant's dealer to sell the 1st Defendant's LPG product within the Plaintiff's area of operation under the Dealership Agreement and thereafter the 1st Defendant wrongfully and/or

illegally continued to appoint the 2nd Defendant to be its dealer to sell its LPG product within the Plaintiff's area of operation under the Dealership Agreement.

12.2 The 1st Defendant knew and/or ought to have known that the 2nd Defendant did not have the licence or permit from the relevant authorities to obtain supply of the 1st defendant's LPG product from the 1st Defendant directly and thereafter to market and distribute the same (hereinafter referred to as 'the relevant licence or permit').

13. The Plaintiff avers that the act of the 1st Defendant referred to in paragraphs 12.1 and 12.2 herein and the 2nd Defendant's act in accepting the appointment thereof and carrying out the terms of the appointment without the relevant licence or permit constitute a conspiracy between the two Defendants to injure the Plaintiff's legitimate rights and interest under the Dealership Agreement.

14. By reason of the said wrongful act and/or conspiracy, the Plaintiff has suffered loss and damage.

Particular of the loss and damage

Loss of the proceeds of sales of the 1st Defendant's LPG product by the Plaintiff due to the wrongful and/or illegal appointment of the 2nd defendant as reflected in the sale of the 1st Defendant's LPG product by the 2nd Defendant in the Plaintiff's area of operation.

17.1 Throughout those discussions, the 1st Defendant and the 2nd Defendant represented to the Plaintiff that the 2nd defendant has the relevant licence or permit.

17.2 In reliance upon the said representation, the Plaintiff accepted the allocation of mere 8 exclusive pockets of area and 3 share pockets of area. At the same time, the 2nd Defendant was allocated 7 exclusive pockets of area and 3 shared pockets of area.

17.3 In fact, the 2nd Defendant, at the material time, did not have the relevant licence or permit.

17.4 The Defendant's said representation was made fraudulently, in that the Defendants knew that it was false, or make recklessly, not caring whether it was true or false.

17.5 Had there not been such misrepresentation and had the 1st Defendant not wrongfully/illegally appointed and/or continued to wrongfully/illegally appoint the 2nd Defendant as its dealer without the relevant licence or permit, the pockets of area

allocated to the 2nd Defendant or part thereof would have been allocated to the Plaintiff, thereby increasing the proceeds of sale of the Plaintiff.

18. By reason of the Defendants' said fraudulent misrepresentation and/or the wrongful act aforesaid, thereby reducing the numbers of pockets of area allocated to the Plaintiff, the Plaintiff has suffered loss and damage.

Particulars of loss and damage

Loss of proceeds of sales which the Plaintiff would have earned from the sales of the 1st Defendant's LPG product in the 2nd Defendant's pockets of area or part thereof".

[16] The allegation in para. 20 is essentially the same as that in para. 13 of the statement of claim.

[17] It is the contention of the 2nd defendant that from the plaintiff's statement of claim (particularly paras 12.1 thereof), it is obvious that the plaintiff's action is based on the 1st defendant's wrongful or illegal appointment of the 2nd defendant to be its dealer to sell the 1st defendant's LPG products within the plaintiff's area of operation under the dealership which took place some time in February 1999. Therefore, according to the 2nd defendant, the time of accrual of the plaintiff's cause of action is some time in February 1999. But it is the contention of the 2nd defendant that from what is pleaded in para. 3 of the statement of claim, the 2nd defendant was not even in existence yet as a firm in February 1999. The 2nd defendant's business firm name was only registered with the Registrar of Business Names, Kuching on 13 April 1999. Accordingly it is the 2nd defendant's case that there can be no cause of action against the 2nd defendant which allegedly accrued in February, 1999 when it was not yet in existence. Accordingly the 2nd defendant contends that the plaintiff's claim is obviously unsustainable on the face of it and ought to be struck out. I do not agree.

[18] The issue before the court is whether the plaintiff's pleadings, as they stand, disclose a reasonable cause of action against the 2nd defendant. To my mind, the point of time at which this question is to be determined is at the date on which this action was filed. From the materia facts pleaded in the plaintiff's statement of claim, particularly in para. 12.1, the plaintiff complains that the wrongful appointment of the 2nd defendant by the 1st defendant constitutes a continuing breach. Counsel for the plaintiff submits, and I agree with him, that in the case of a continuing breach a fresh cause of action accrues during the

continuation of the breach ie, the 2nd defendant's wrongful appointment. Although the 2nd defendant may not have been registered as a firm in February 1999, it was certainly in existence as a firm by 8 December 2003 when the plaintiff commenced this action.

[19] The 2nd defendant has also taken the point that O. 77 r. 1 RHC states:

> Subject to the provisions of any written law, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

[20] It is the 2nd defendant's contention that it is an abuse of the provisions of O. 77 r. 1 RHC for the plaintiff to sue the 2nd defendant in the firm's name when at the time when the cause of action allegedly accrued the 2nd defendant firm was only a sole-proprietorship. I see nothing in the point taken. In the first place it is raised as an abuse of process point. I am here concerned with whether the plaintiff's pleadings disclose a reasonable cause of action against the 2nd defendant. In the second place, at the date this action was commenced the 2nd defendant was a firm with more than one proprietor. Accordingly it was not an abuse of process to bring this action against the 2nd defendant in its firm name especially as the plaintiff contends that the breach complained of is a continuing breach giving rise to a fresh cause of action while the breach continues.

[21] With regard to the case of *Fu Yen Development Sdn Bhd (suing as a firm) v. Shelly Yap Leong & Co (sued as a firm)* [2001] 3 AMR 3736 I do not find what was decided in that case of any assistance here because there the issue was whether there was an abuse of the provisions of O. 77 r. 1 RHC - not whether the pleadings disclosed a reasonable cause of action against the defendants. Also, the facts there are so different from the facts here. In that case it was held that there was an abuse of the process afforded by O. 77 r. 1 RHC because there the plaintiff firm was in truth a sole proprietorship but had sued in the firm name. Here when the action was commenced against the 2nd defendant on 8 December 2003 it was no longer a sole-proprietorship.

[22] For all the above reasons the 2nd defendant's application to strike out the plaintiff's claim under the first limb of O. 18 r. 19(1) fails.

[23] I will now consider whether the plaintiff's claim is scandalous, frivolous, vexatious or otherwise an abuse of the process of court.

[24] The 2nd defendant's complaint is that this suit is scandalous, frivolous or vexatious and constitutes an abuse of the process of court because its appointment as a dealer of the 1st defendant's LPG products cannot be regarded as unlawful or illegal when at all material times it was issued with the necessary CSA licence and PDA permit to deal in and market the 1st defendant's LPG products. So the 2nd defendant says the plaintiff's case is clearly unsustainable and must be struck out. It is clear to me to see that the 2nd defendant's contention that it had been issued these two licences is based on one fundamental proposition, which is seriously disputed by the plaintiff, namely, that the firm Syarikat Pulau Burung of No. 97 Jalan Stapok, Batu Kawa, Kuching (which is the firm named in the two CSA licences issued under reg. 4(1) of the Control of Supplies Regulation) and the firm Syarikat Pulau Burung of No. 11 Pasar Sebuyau, Sebuyau, Sarawak which was originally registered with the Business Names Registry in Sri Aman on 3 April 1985 under BNR No. 21/85 (which is the entity named in the PDA permit issued under s. 6 of the Petroleum Development Act 1974) and the 2nd defendant here ie, Syarikat Pulau Burung of No. 97 Jalan Stapok, Batu Kawa, Kuching under BNR No. 47811 are all one and the same firm.

[25] The 2nd defendant also sought to explain in the affidavits that have been affirmed on its behalf in these proceedings why the firm 'Syarikat Pulau Burung' appearing in the CSA licences and the PDA permit are one and the same firm as the 'Syarikat Pulau Burung' which is named as the 2nd defendant in this suit and I have already in an earlier part of this judgment set out the 2nd defendant's explanation and so I will not repeat them here.

[26] The plaintiff however maintains that the 'Syarikat Pulau Burung' which is named in the CSA licences and PDA permit, and the 'Syarikat Pulau Burung' which has been sued as the 2nd defendant here are not one and the same firm and rely on the following facts in support of what it says:

(a) Under s. 5(1) of the Business Names Ordinance (Cap 64), every firm which is required under s. 4 to be registered must furnish to the Registrar information about the name of the firm, that is, the name under which its business is carried on and the principal place of business and every branch office and subsidiary place of business. These must also be supplied particulars sufficient to identify all other businesses or firms in which the proprietor or any of the partners, as the case may be, is or are interested in. The plaintiff says that looking at exh. LKY10 which is an Extract of Registration of Business Names in respect of Syarikat Pulau Burung

of No. 97 Jalan Stapok, Batu Kawa, under BNR No. 47811 on 13 April 1999 ie, the 2nd defendant here, there was no particulars or information furnished there that the proprietor or partners in the Syarikat Pulau Burung named in the extract were also interested in Syarikat Pulau Burung of No. 11 Pasar Sebuyau, Sebuyau which is registered in Sri Aman under BNR No. 21/85 as now alleged by the 2nd defendant; or even that the 2nd defendant here had a principal place of business or branch office or subsidiary place of business at No. 11 Pasar Sebuyau, Sebuyau.

(b) the registered co-proprietors in the 2nd defendant are different from those persons named in Syarikat Pulau Burung which was registered in Sri Aman under BNR No. 21/85. From exh. LKY10 which is the Extract of Registration of Business Names of the 2nd defendant under BNR No. 47811 and exh. LKY11 which is the "Petikan Pendaftaran Nama-Nama Perniagaan for the 'Syarikat Pulau Burung' registered at Sri Aman under BNR No. 21/85", it can be seen that when the 2nd defendant firm was registered on 13 April 1999 its registered co-proprietors are not the same as those persons named in Syarikat Pulau Burung registered in Sri Aman under BNR No. 21/85 or with the permit holders of the PDA permit (exhibited as LKY2). Accordingly the plaintiff contends that the 2nd defendant's assertion that the Syarikat Pulau Burung at Sri Aman and the Syarikat Pulau Burung named in the PDA permit and the 2nd defendant here are all one and the same is contradicted by the documents now before the court. The plaintiff also points out that while the 2nd defendant contends that for the period 6 October 1990 to 21 August 2001 one Mohd. Zainal Bin Ghani Mohamad was a registered co-proprietor of Syarikat Pulau Burung registered in Sri Aman under BNR 21/85 and having its address at No. 11, Pasar Sebuyau, Sebuyau, when what is asserted is compared against the PDA permit No. 6766 which was issued to Syarikat Pulau Burung of No. 11, Pasar Sebuyau, Sebuyau, the names that appear in the PDA permit are (1) Utin B. Arif, (2) Wan Abdul Latip B. Wan Manshor and (3) Law Keng Yang, but Mohd. Zainal Bin Ghani Mohamad's name does not appear in the PDA permit. Further, the plaintiff points out that the 2nd defendant has tried to explain away the differences in the documents before the court by having Mohd. Zainal Bin Ghani Mohamad depose that he was a registered co-proprietor in Syarikat Pulau Burung registered at Sri Aman under BNR 21/85 from 6 October 1990 to 21 August 2001 and that he held the 85% shares in trust for Utin B. Arif. The plaintiff says such deposition is contradicted by exh. LKY8 which is the Petikan Sah Dari Borang Pendaftaran Nama-Nama Perniagaan in respect of Syarikat Pulau Burung registered at Sri Aman under

BNR 21/85 which shows that as at 2 April 1991 the said Utin B. Arif was already a registered co-proprietor of the firm holding 85% of the shares but Mohd. Zainal B. Ghani Mohamad was not.

(c) the Ministry of Internal Trade and Consumer Affairs has in a letter dated 21 May 2002 stated that the PDA permit No. 6766 was issued to Syarikat Pulau Burung registered at Sri Aman under BNR 21/85 and that the 2nd defendant here does not have a PDA permit. Accordingly the plaintiff says this is another document that contradicts the 2nd defendant's contention that it and the Syarikat Pulau Burung named in the PDA permit are one and the same.

[27] Although the 2nd defendant disputes all the above facts put forward by the plaintiff to show why the 2nd defendant and the other Syarikat Pulau Burung cannot be one and the same, I do not think that the points raised by the plaintiff can be regarded as scandalous, frivolous or vexatious and raised as abuse of the process of the court. The plaintiff's assertion seems to be supported by the documents now before the court and it is not permissible for the court to try these disputed facts on affidavit evidence nor should the court enter upon a minute examination of the documents and facts to determine whether what the plaintiff or 2nd defendant asserts is the true or correct version. For present purposes I am satisfied that on the materials placed before the court, the allegations raised by the plaintiff are not scandalous, frivolous, vexatious and an abuse of the process of court. It may well be that the 2nd defendant will eventually be able to make good its defence, but the fact that the plaintiff may have a weak case against the 2nd defendant is no reason to strike out the plaintiff's case under the summary process under O. 18 r. 19(1).

[28] For all the above reasons the 2nd defendant's application under the second and fourth limbs of O. 18 r. 19(1) must also fail.

[29] In the result I dismiss the 2nd defendant's application with costs.